Volume 64
Issue 1 *Dickinson Law Review - Volume 64, 1959-1960*

10-1-1959

Recent Case

RECENT CASE

ATTEMPTS BY EMPLOYERS TO PRECLUDE PAYMENT OF UNEMPLOYMENT COMPENSATION

Can a private agreement between employer and employee affect a subsequent claim by the employee for unemployment compensation benefits? What is the effect of the receipt of an income from a retirement or pension plan upon a claimants eligibility for unemployment compensation benefits? What interpretation is to be placed upon a statute which provides that a pregnant claimant is not eligible for unemployment compensation benefits after seven and one-half months of pregnancy?

These questions were decided by the Pennsylvania Supreme Court for the first time in two recent cases involving claimants in two of the most controverted areas of unemployment compensation administration: retired workers and pregnant women.[1]

In the retired workers case, *Warner Co. v. Unemployment Compensation Bd. of Review*,[2] Antonio Gianfelice, while receiving a pension from his former employer, applied for unemployment compensation benefits. His application was approved by the local office, but on appeal was denied by the referee. The Board of Review reversed the referee, and it, in turn, was reversed by the Superior Court.[3]

The Superior Court, in denying benefits, based its decision on an interpretation of the retirement provisions of Gianfelice's union contract with the employer. The contract stated that an employee who had reached the age of 68 could continue in his employment only with the consent of the employer.[4]

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[1] For a more general discussion of these and other controverted areas of the Unemployment Compensation Law, see: *Observations on Unemployment Compensation*, 63 DICK. L. REV. 344.

[2] 396 Pa. 545, 153 A.2d 906 (1959). Also cited as: Gianfelice Unemployment Compensation Case.

[3] Warner Co. v. Unemployment Compensation Bd. of Review, 186 Pa. Super. 186, 142 A.2d 739 (1958).

[4] The provisions relating to retirement are as follows:

"1. Each participant who, while an employee of the Company has attained age 65 on July 1, 1950, or attains age 65 thereafter, shall be eligible to retire on July 1, 1950, or his attainment of age 65, whichever is later, and, if he has completed 10 or more years of continuous service, shall be eligible for retirement income benefits computed in accordance with Section V hereof.

"2. A participant may remain in service of the Company after his attainment of age 68 or July 1, 1952, whichever last occurs, *only with the consent of the company* and upon his retirement thereafter, if otherwise qualified, he shall be entitled to receive retirement income benefits." (Emphasis added.)

Three of the five judges who heard the appeal felt that termination of the employment under the provisions of the contract constituted a "voluntary quit" by the claimant[5] despite the fact that claimant wanted to continue working. These judges held that the termination was voluntary in a *legal sense,* i.e. since the union was the bargaining agent for the employee-claimant, he was bound by the terms of the agreement made for him and, therefore, he had agreed to retire at age 68. The individual's desire to continue working was considered meaningless in the face of *his* agreement to retire. There was dicta in the case to the effect that claimant was not the type person intended to be covered by the provisions of the unemployment compensation law, but other than that the case turned entirely upon the contract interpretation.

The Pennsylvania Supreme Court reversed. It refused to interpret the rather "ambigious" [6] provisions of the union contract and wholly rejected any "contract-interpretation" approach to eligibility determination. The proposition that an employee is bound by his union's agreement with the employer was affirmed, but it was held that such an agreement could have no effect upon the individual claimant's eligibility for unemployment compensation benefits. The court held that a determination of eligibility depends upon whether the claimant *actually,* voluntarily terminated his employment. In the words of the court: ". . . *the factual matrix at the time of separation should govern.*" [7]

Since the main purpose of contract provisions of this type is to provide for job security, the court felt that it is anomalous to say that the employee who loses the protection of the job security provisions of his contract through no fault of his own is in any position different from the employee who has never had a contract. Therefore, since the purpose of the Unemployment Compensation Law is to protect the employees from the rigors of unemployment caused by, among other causes, arbitrary dismissal, this claimant comes within the class of persons designed to be protected.

This would have been sufficient to decide the case at bar, but, perhaps through a desire to settle definitely and finally all the collateral issues of this case, the court went further and stated:

> . . . Where a statute of the Commonwealth expresses a public policy designed to alleviate a condition of possible distress among the public or a segment thereof and *explicitly proscribes waiver of the benefits of the act,* no private agreement, however valid between the parties, can operate as such a wavier. . . .[8] (Emphasis added.)

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[5] Rhodes, P.J., Wright, and Watkins, J.J. Ervin and Woodside dissented,

[6] Warner Co. v. Unemployment Compensation Bd. of Review, 396 Pa. 545,550, 153 A.2d 906, 909 (1959).

[7] Warner Co. *supra* note 6 at 551, 153 A.2d at 909.

[8] Warner Co. *supra* note 6 at 554, 153 A.2d at 911.

The court was referring to section 701 of the Unemployment Compensation Law, which states, "No agreement by an employee to waive, release, or commute his rights to compensation, or any other rights under this act, shall be valid." [9] Finally, the Supreme Court affirmed earlier decisions of the Superior Court which have held that the receipt of pension benefits will not preclude a claimant from unemployment compensation.[10]

On the same day that the *Warner* case was decided, the Supreme Court also handed down an opinion in the case of *Smith v. Unemployment Compensation Bd. of Review*.[11] This case involved a pregnant claimant who had been "laid-off" pursuant to a company policy which forbade female employees to continue working beyond their fifth month of pregnancy.

In passing upon this case, the Superior Court had reasoned that Section 701 of the Unemployment Compensation Law did *not* apply because this was a "reasonable condition" of employment.[12] That is, the individual safety of the employee was a major consideration of the company in ordaining the rule. Once again, the claimant's desire to continue working was considered meaningless. However, the Supreme Court ignored this reasoning and decided this case on the same basis as the *Warner* case. The court reiterated the statement quoted above to the effect that no private agreement, however valid between the parties, can have an operative effect upon the determination of a claimant's eligibility for unemployment compensation benefits.

In this case, as in the *Warner* case, the court went further than necessary to decide the case. A 1953 amendment to the Unemployment Compensation Law provides that a claimant shall be conclusively presumed to be unavailable for work after seven and one-half months of pregnancy, and until one month after the conclusion of the pregnancy.[13] This was interpreted as placing the burden of proving that the claimant is unable to work upon those contesting her eligibility.

In clarifying the status of claimants in both of these areas the Supreme Court has offered stability to a segment of the law that has been in a constant state of confusion. Furthermore, their decision should greatly simplify the administration of the law. In order to comply with the Superior Court holding, it would have been necessary to construe each new contract in order to determine whether the claimant, through his union, had actually agreed not to

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[9] PA. STAT. ANN. tit. 43 § 861 (1937).

[10] Pendleton Unemployment Compensation Case, 167 Pa. Super, 256, 75 A.2d 3 (1950). Martin Unemployment Compensation Case, 174 Pa. Super. 412, 101 A.2d 421 (1953).

[11] 396 Pa. 557, —— A.2d —— (1959). Also cited as Smith Unemployment Compensation Case.

[12] 187 Pa. Super. 560, 146 A.2d 59 (1958).

[13] PA. STAT. ANN. tit. 43 § 801(d) (1953).

work after the happening of a contingency. Investigation into the motives of both labor and management at the time the contract was made and, when available, conduct of both under the contract would be involved to such an extent that litigation would be necessary in nearly every case. Ignoring the contract leaves the administrators of the law with a comparatively simple factual determination of whether or not the claimant wanted to continue working and was eligible to do so.

Criticism might be leveled at these decisions on the basis that section 701 was intended to prevent the employer from taking advantage of the unequal position of the job-seeker by requiring a waiver of unemployment compensation benefits as a pre-requisite to employment. But, the critics might say, the employee who is represented by a labor union is not in an unequal position, and such contracts should be allowed as part of the give and take of the bargaining table.[14] This is true, as far as it goes. However, as a practical matter the individual union member is not in the position of the ordinary principal. He normally has very little to say about the provisions of the contract he wishes to endorse and those he wishes to reject. When unemployment strikes, he will feel the rigors of it just as strongly as the claimant who has no union. The subsequent effect upon the economy of the nation is precisely what was intended to be avoided by the legislation.[15]

It is unfortunate, however, that the court chose to make such an unexceptionable statement concerning the utilization of a private agreement in determining the eligibility of a claimant, and in the same case to affirm the right of one receiving a pension to draw unemployment compensation benefits. It would not be unusual for a pension plan to contain the provision that all payments under the plan will cease whenever the beneficiary secures any remunerative employment. It is a rare individual who would be willing to accept employment at the minimum wage when he is already drawing more than that amount with his pension and unemployment benefits combined, especially since both would cease upon his return to work.[16]

Allowing benefits to such a claimant presents the administrators of the law with a very difficult problem. It is possible that such a claimant could draw benefits for many weeks before employment is even proffered. It is a simple matter in any labor market to avoid being hired without actually refus-

[14] It is noted that the employee contributes nothing to the Unemployment Compensation Fund, while the employer's contribution is a percentage of the wages paid based upon the amount of money in the fund and his unemployment record.

[15] PA. STAT. ANN. tit. 43 § 752(1952).

[16] This situation was dealt with in the Pendleton Unemployment Compensation Case, 167 Pa. Super. 256, 75 A.2d 3(1950). The Superior Court, although it was dicta, said that such a provision in the pension agreement should result in disqualification.

ing to accept employment. A prospective employer is not likely to hire an applicant whom he feels does not want the job. Further, it is too much of a burden to ask the employer to hire this type so that availability might be tested.[17] If the court had considered this particular situation, it is quite possible that it would have made an exception to its rule; as it stands now this question will probably have to be litigated.

These cases have resolved four areas of conflict with the following rules. First, no private agreement will have any effect upon the eligibility of a claimant for benefits. Second, investigation as to the fact of whether the employer or the claimant caused the termination of the employment relation will be confined to matters of fact at the time of the separation. Third, the idea that one who is receiving other income should not be the recipient of unemployment compensation is rejected. This tends to remove the onus of "charitable payments" from unemployment compensation. Fourth, the fact of pregnancy will have no effect upon a claimant's eligibility unless the pregnancy actually renders her unavailable for work.[18]

If, as contended by the Superior Court, the legislature did not intend payments to be made under the above circumstances, the burden is now upon the legislature to make specific changes. It would seem that the Supreme Court's ruling upon the "factual matrix" is the most sensible approach. Obviously not every member of the two groups is in reality a member of the labor market, but this is a fact that ought to be determined individually, so that those who are able and available for employment will not suffer because of the disability of others.

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[17] Refusal to accept suitable employment is cause for disqualification. PA. STAT. ANN. tit. 43 § 802(a)(1953).

[18] One must be both *able* and available for work. PA. STAT. ANN. tit. 43, § 801(d)(1953).